I would add that there is not a single affidavit filed by the applicant which gives reasons for his personal misgivings with regard to Mr. Goh. It is not his counsel's misgivings however which count; it is the client's and, whilst no doubt his counsel is acting on instructions from him, the weight to be attached to affidavits other than those by himself would necessarily be less than if he had filed affidavits expressing his own views based on his own personal knowledge of the facts. His counsel can only state what he understands the facts to be from information he has gleaned from members of the public. Assuming however that every word of the affidavits filed on behalf of the applicant is exactly what the applicant would himself have said I would nevertheless reach the same conclusion on this Motion. I am not satisfied that Mr. Goh has been shown to be unfit for any of the reasons stated to act as an assessor in this appeal as between the applicant and the Collector of Land Revenue in respect of the award made by the latter. I would repeat what I have earlier said that the Government is not a party to the proceedings now before the Board.

The application with regard to Mr. Goh as well as Mr. Chi is accordingly dismissed with costs.

Order accordingly.

Solicitors: *Hilborne & Co.*

NICHOLAS ARTHUR NOCK v. MOHAMED ALI BIN SULEIMAN & ANOR.

[O.C.J. (Winslow J.) October 31, 1975]
[Singapore — Civil Suit No. 1450 of 1971]

Damages — Personal injuries — Injuries to head, face, fracture to base of skull etc. — Claim for damages — Whether defendant negligent — Liability — Damages — Assessment of quantum of damages — Grounds on which court decides.

Negligence — Plaintiff sustained injuries as a result of accident caused by lorry — Whether defendant liable — Claim against defendant for damages.

A colleague of the plaintiff and two others were travelling along Guillemard Road in a taxi from the airport and heading for the city closely followed by the plaintiff on his motor cycle. There were three lanes on that side of the dual carriageway which carried traffic citywards and both the taxi and the plaintiff's motor-cycle were in the centre lane. The plaintiff was in the middle left hand half of that centre lane as one faces the city. At the material time the lorry was travelling behind and on the inside lane to the left of both of them as one faces the city. The taxi was travelling at about 30 m.p.h. with the motor-cycle and the lorry at a slightly slower speed but more or less keeping pace behind the taxi.

Just before the accident took place on a slight right bend towards the city not far from Lim Ah Woo Road, the lorry accelerated slightly faster than the motor-cycle on the inside lane, got abreast the motor-cycle and cut sharply to its right when slightly more than half-way past the motor-cycle. It clipped the left handle-bar of the motor-cycle with the flat back of the lorry or slightly under there about a third of the way from its rear. The plaintiff fell to his left and the motor-cycle to its right and the rear wheel ran over the plaintiff's head.

As a result of the said accident, the plaintiff suffered injuries to his head and face including fractures to the base of his skull, the left mandible, left zygoma and his eleventh rib and the left ilium or pelvic bone. He also developed severe visual defects, double vision and a squint as well as diabetes insipidus of a permanent nature.

The plaintiff claimed damages against the defendants.

Held: (1) on the facts the defendants were totally liable;

(2) in all the circumstances of the case and in particular the facts that it could not be assumed that the plaintiff would succeed in remaining in the air force or would necessarily want so to remain, an award of £7 per week until he reaches the age of 60 years for loss of future earnings would be fair;

(3) the plaintiff would therefore be awarded $31,084.80 for future loss of earnings and $19,842.35 in respect of past loss of earnings.

(1) *Parry* v. *Cleaver* [1969] 2 W.L.R. 821.
(2) *Ti Huck & Anor.* v. *Mohamed Yusof* [1973] 2 M.L.J. 62.

CIVIL SUIT.

K. E. Hilborne for the plaintiff.

Tan Thian Chua for the defendants.

Winslow J.: According to Senior Aircraftsman Cook, a colleague of the plaintiff, he and his wife boarded a taxi from the Singapore Airport after all three of them and a Mr. Bell had seen a friend, Mr. Kemp off there. Cook and his wife sat in the rear of the taxi with Bell in front and, as the plaintiff did not know the way to the Cellar Bar in the City which was their destination, Cook took great pains to ensure that the plaintiff on his motor cycle was in fact following their taxi as he in fact did. On reaching the traffic lights at the junction of Paya Lebar Road with Geylang Road, Cook saw that the plaintiff, Nock was immediately behind the taxi.

After the lights changed in their favour the taxi moved off into Guillemard Road followed by the plaintiff. There were three lanes on that side of the dual carriageway which carried traffic Citywards and both the taxi and Nock's motor cycle were in the centre lane. Nock was in the middle of the left hand half of that centre lane as one faces the City. Cook was positive that he first noticed the defendant's lorry accelerating away from the traffic lights at the junction in question. He said that the lorry was on the inside lane to the left of both of them as one faces the City but nevertheless behind them. The taxi was travelling at about 30 m.p.h with the motor cycle and the lorry at a slightly slower speed but more or less keeping pace behind the taxi.

Just before the accident which took place on a slight right hand bend towards the City not far from Lim Ah Woo Road the lorry accelerated slightly faster than the motor cycle on the inside lane, got abreast of the motor cycle and cut sharply to its right for some inexplicable reason when slightly more than half-way past the motor cycle. It clipped the left handle bar of the motor cycle with the flat back of the lorry or slightly under there about a third of the way from its rear. The plaintiff fell to his left and the motor cycle to its right and the rear wheel ran over the head of the plaintiff. Fortunately Nock was wearing a crash helmet.

He nevertheless suffered injuries to his head and face including fractures to the base of his skull, the left mandible, left zygoma and his 11th rib and the left ilium or pelvic bone. He also developed severe visual defects, double vision and a squint as well as diabetes insipidus of a permanent nature.

Although the defendant (the driver of the lorry) gave evidence before me whereas Cook did not, I am satisfied from Cook's deposition in London, where he was subjected to cross-examination, that his version is the more acceptable one. Cook's evidence is, for what it is worth, supported by his wife's evidence though she seemed to have a hazier recollection of events than her husband and was not too sure of anything except that she was sure the lorry overtook the motor cyclist and knocked him down.

The first defendant said that he did not really know how the accident happened by which he said he meant that he did not see the accident. Otherwise, he claimed that he was travelling in the centre lane all along till the accident occurred. He said the traffic was heavy and that his speed was 15 to 16 m.p.h. because of that.

He claimed that the taxi overtook him and that he heard the loud sound of a motor cycle from his rear and then a bang towards the rear of his lorry and then the sound of something dragging on the road. He said he later saw a superficial scratch on the rear offside tyre. He said he saw the taxi in his rear view mirror overtaking him and that he did not look into the rear view mirror after that. When pressed on this, he said he could not see any vehicle in the lane behind the taxi because there was a slight bend in the road but I would observe that the road actually bends slightly to the right there and if the motor cycle had been overtaking him on his right there was nothing to prevent him from seeing it (see AB18, a more accurate sketch plan, prepared by Mr. Hilborne, than that at AB4).

He called a witness who said he sat in the rear of the lorry but who could not remember if he heard any sound approaching the lorry from the rear. He was engrossed in conversation with his friend. All he heard was the sound "doop" followed by a dragging sound. He could not say if the "doop" sound came from the rear itself or the rear offside of the lorry. He also said the lorry's speed was 15 to 20 m.p.h. — it was crawling along — and that normally lorries do that speed. He was not sure if it was light or dark and he did not see traffic. I am satisfied that he does not throw any light on the accident which helps the driver.

Mr. Tan Thian Chua, on behalf of the defendants, suggested that Cook was "helping the plaintiff to achieve monetary gain." The suggestion is that Cook was lying. Although I never saw Cook in the witness box I am not prepared to hold on the evidence before me that he was lying. His version under cross-examination gives me no cause to believe that it has been fabricated. It sounds genuine. I see no good reason to doubt his version. This is not what I can say about the first defendant or his witness who did give evidence before me. Neither was observant or attentive nor can they remember anything about the accident which shakes my confidence in Cook's evidence. Cook of course had reason to have a good view of what was taking place behind him and I am prepared to believe that he kept a special watch over the plaintiff's movements behind him because he was anxious that the plaintiff should not lose contact with the taxi. It was when the taxi started pulling away from the plaintiff that he observed the lorry from the inside lane cutting to its right as it overtook the motor cycle. It is reasonable to infer that the lorry was taking the opportunity of getting into the centre lane from the lane on the extreme left.

I do not consider that the fact that the plaintiff was in the middle of the left half of the centre lane makes him guilty of any contributory negligence. If the lorry had remained in the inner lane this accident would not have taken place. The fact that he pulled to a stop in the centre lane much further away does not prove that he was always in the centre lane.

I do not believe the story about the scratch mark on the rear offside tyre of the lorry or that the lorry driver showed the police officer who took his report a sketch plan of the scene of the accident. I cannot believe that the plaintiff, in overtaking the lorry on its right as suggested, hit the rear offside tyre and had his head run over by that tyre! It is much more likely that the lorry cut to its right from the inner lane and clipped the motor cyclist's left handle bar as he was in front of that rear offside wheel thereby throwing him to his left under that wheel and causing the motor cycle to fall to its right and be dragged by its own momentum to its final position. I do not believe that the lorry was crawling along at a slow speed because of heavy traffic — it was a one-way lefthand carriage way with three lanes. If the traffic was so heavy as to cause the driver to crawl along it is difficult to understand how the motor cycle left scratch-marks 43 feet long in the outer lane to the right of the centre lane.

I agree with Mr. Hilborne's submission that the evidence is all one way *i.e.* in favour of the plaintiff. The particulars of negligence as pleaded by the defence, presumably drafted on instructions, suggest that the lorry driver gave an entirely different version of what occurred from that given in court. His report does not help him at all. There never was any question whatsoever of oncoming traffic in that half of Guillemard Road and in that report he did not say one word about the motor cyclist's overtaking him or what their respective positions in that road were.

I accordingly find that total liability has been established to my satisfaction by the plaintiff as against the defendants.

The matter which remains for decision is the quantum of damages as a whole which I should award, general damages in respect of the injuries themselves having been agreed at $20,000 which seems to me a reasonably generous sum for pain and suffering and loss of amenities in all the circumstances of this case. The difficult problem that arises is with regard to the loss of earnings incurred by the plaintiff who joined the R.A.F. as an apprentice on August 12, 1966 at the age of 17 years and, after the accident on March 11, 1970, was medically discharged therefrom on December 17, 1970. It is agreed that his longevity has not been affected and that he is fully employable.

Mr. Hilborne's written submission on damages is an ambitious one and is based on the calculations which received approval in the case of *Parry* v.

Cleaver,[1] a House of Lords decision, more particularly on whether contributory pensions should not be taken into account in assessing loss of future earned income. In all he suggests a total of $130,000 in General Damages (including $20,000 as agreed for the injuries) and a further $20,000 in Special Damages for loss of earnings etc., between his discharge and the date of this judgment.

Mr. Tan on the other hand emphasises that this is a grossly exaggerated claim which does not follow the trends in our courts. He justifiably maintains that the plaintiff is fully employable in the private sector. He claims that the private sector pays more than the R.A.F. He suggests a nominal sum of between $5,000 to $7,500 for future loss of earnings and agrees to the other two sets of $20,000 each, one for the pain and suffering etc., and the other for special damages prior to date of judgment making a total of $47,500 in all at the most.

Although Flying Officer Katherine Mary Anderson said that it is easy to project a career in the Air Force and that promotion is automatic once a person like the plaintiff becomes a Junior Technician which in 1970 the plaintiff was not, it is clear that the plaintiff was required to pass certain qualifying examinations before being phased into fitter training and to undergo training thereafter, if he passed, in a fitter's course before reaching the position of Junior Technician. Even Miss Anderson could not be sure that he would pass or if he would be put on another course if he did not pass. Although she said that he was bound to become a Junior Technician, the longest period being 6 years from date of joining for anyone, this is not borne out by AB8 from the Air Officer Commanding, R.A.F. which states that his promotion to the rank of Junior Technician could be forecast for March 1974 assuming he continued in the service until the expiration of his 9 year engagement. Moreover, it says that March 1973 would be the earliest when he could be phased into fitter training. Mr. Hilborne's submissions at Schedule C assume that he would have become Junior Technician on January 1, 1973. According to AB9 his weekly pay would have been £24.17 until March 1974 and not £39.34. According to AB13 it would have been £29.30 *i.e.* £4.18 per day. There is some obscurity here. Moreover, these are gross weekly rates from which contributions towards the pension scheme were deducted.

The private sector paid at least in respect of July 1, 1974 onwards £35 per week as against £29.30 being the gross weekly rates until March 1974 (AB13) which he would have received in the R.A.F. before promotion to Junior Technician. The figures in the letter dated August 13, 1975 are not understood and do not make sense on comparison with figures at AB8, 9, 13 and 14. Perhaps this is why Mr. Tan says the private sector pays more!

It is unfortunate that no oral evidence was given as to the details of the actual pay he would have received in each year subsequent to 1970. The letter of August 13, 1975 was handed up without explanation nor did Miss Anderson say anything about it which helps me. In fact, the references to A, B and C in AB6, 8 and 13 were never produced and these letters are to that extent obscure. The plaintiff has accordingly not succeeded in satisfying me that he would have necessarily earned very much more in the R.A.F. than in the private sector on the letters submitted or on the evidence of Miss Anderson. The figures which purport to be revised gross weekly rates came into force on April 1, 1975 are also obscure in relation to the plaintiff's potential earnings after 1970.

It must be remembered that unlike Parry who had served for about 12 years in the police force before the accident and the plaintiff in *Ti Huck & Anor.* v. *Mohamed Yusof*[2] who had served for about 16 years in the Malaysian Police Force before his accident, the plaintiff in the case before me had served in the R.A.F. only for a little over 3½ years before this accident and he was accordingly in the very early stages of his career therein. He still had to pass examinations and thereafter to undergo a fitter's course of training before being eligible for engagement for 22 years until 1989. This again depended on vacancies and other factors at the end of the 9 years' engagement he commenced in 1967. The plaintiff himself said that advancement meant how hard one worked although there was not a high failure rate. He did not really know how long over all he intended to stay in the R.A.F. because although he was planning to stay in the R.A.F. he "could not say what it would be".

Further, in my opinion, merely to deduct a static £35 per week from now until 1989, being his projected earnings in civilian employment, at his last drawn rate of pay with Arrow Air Services which he left on July 11, 1975, is unrealistic. There is no reason why he should not go on earning progressively more until 1989.

The rates worked out for the plaintiff's earnings had he remained in the Air Force until 1989 *i.e.* the expiration of the 22-year period of engagement and the pension he would earn from 1989 until he reaches the age of 70 years may seem fair enough, subject to contingencies such as the uncertainties relating to his future earnings which depend on whether he would remain in the R.A.F. until 1989, provided a reasonable deduction is also made in respect of his projected earnings in civilian employment at a non-static rate, not as submitted on his behalf up to 1989 only but also for his expected span of working life including whatever contributory pension to which he might become entitled in the private sector.

It is reasonable to suppose that he will work till about the age of 55 to 60 years and it is also reasonable to expect that he will be able to make arrangements to work with some firm in civilian employment which would also have a graduated pension scheme such as the Air Force does.

In my opinion it would be unfair to the defendants to work out his projected earnings in civilian employment at a static figure of £35 per week whereas the Air Force figures submitted have been worked out on rising rates based on increments from time to time as well as rises as a result of inflation presumably from now until his retirement.

Doing the best I can in all the circumstances I find myself unable to do more than to assess his future

loss of earnings at a figure of an average of about £7 a week at the most, representing the difference between what he would have got from the Air Force until the age of 60 years including pension and what he would earn in the private sector until then including pension, if any, less deductions for tax as well as his own contributions to any pension scheme. I propose to leave out of consideration any further pension he would receive from the Air Force or elsewhere until he reaches the age of 70 years for the purposes of my assessment because some allowance must be made for the fact that he may not necessarily complete his normal span of 70 years.

I do not know why he left Arrow Air Services just before the trial. Presumably he is employable at similar rates to those received then with prospects of corresponding rises in pay subsequently such as he would have received in the Air Force with prospects of pension if he makes up his mind to join a firm having a graduated pension scheme.

In my view, this approach to his loss of future earnings having regard to the various contingencies including those relating to his future career with the Air Force which have to be considered in view of his comparatively short service with the Air Force before the accident, would not do him an injustice. He may never have remained in the Air Force; he may have failed to pass his examinations or he may not have been re-engaged for a 22-year period in which case he would have had to enter the private sector with *no consequent loss of earnings* at all to speak of.

To summarise, in assessing his future earnings, I have borne in mind three crucial matters which must necessarily affect any computation thereof —

1. the fact that one cannot assume that he would succeed in remaining in the Air Force or would necessarily want to so remain;

2. the fact that comparison between the Air Force rates of pay and rates of pay in the private sector must necessarily be highly speculative if not odious and that the only yardstick I have at the moment which I can apply as to the future is in respect of the rates of pay prevailing around the time the plaintiff left Arrow Air Services at £35 per week in July 1975 when had he remained in the R.A.F. he might not have qualified yet to be a Junior Technician, if he did remain in the R.A.F., and he might have earned no more than he did with Arrow Air Services;

3. the fact that between 1971 and 1974 he seems to have got off after a slow start in the private sector, which is understandable, to a rapid increase in pay from £27 per week to £35 per week within 4 months by July 1974. He was moving from one firm to another. He was however always in employment and was no doubt trying to improve his earnings notwithstanding his handicapped appearance which he did succeed in doing until he left before the trial for reasons unknown. He does not seem to have done too badly in all the circumstances and his prospects of doing better are always there and, so far as I can see, he can work beyond the age of 40 years if he does not obtain pensionable employment with one employer. If by temperament he is a rolling stone he may not have lasted very long with the R.A.F. and he must, if that is so, consider himself a fortunate young man.

In all the circumstances, an award of about £7 per week until he reaches the age of 60 years would, in my judgment, be far from unfair. This would give him 34 years' purchase at approximately $160 per month which will, because he will receive the full amount now, necessarily be less (according to the Murphy tables which the courts have been using for a very long time) than the sum reached by multiplying the average monthly loss by the total number of months in 34 years. I would accordingly award him $31,084.80 for future loss of earnings.

I might add that, although Special Damages in respect of past loss of earnings have been agreed at $19,842.35, this figure, in my opinion, is on the generous side.

Judgment will accordingly be entered for the plaintiff in the total sum of $70,923.15 to be paid to the Public Trustee on his behalf with costs.

Order accordingly.

Solicitors: *Hilborne & Co.; Tan Thian Chua & Co.*

KOH TENG LAM v. ELSIE KOH CHEN CHEE & ANOR.

[O.C.J. (Choor Singh J.) November 26, 1975]
[Singapore — Divorce Petition No. 307 of 1974]

Family Law — Divorce — Petitioner alleged cruelty and adultery committed by respondent — Burden of proof on petitioner — Standard of proof — Proof beyond reasonable doubt — Evidence — Whether facts alleged have been proved — Women's Charter (Cap 47), s. 84.

Custody — Welfare of infant — Boy of tender age — Mother better custodian — In deciding question of custody possibility of reconciliation to be taken into consideration — Guardianship of Infants Act (Cap. 22), s. 3.

The petitioner and the respondent met towards the end of 1967 when they were both studying in London. They were married at the Registry Office in London and on December 4, 1970, the respondent gave birth to a baby boy in Singapore. The petitioner was studying in London at the material time and returned to Singapore on a short holiday in April, 1972. His son was by then 19 months old. In October, 1971, the respondent joined the Baharuddin Vocational Institute where she is still employed as a design teacher.

The petitioner sought a dissolution of his marriage on the grounds of his wife's cruelty and adultery. The petitioner referred to an incident which took place on March 6, 1970 when the respondent was alleged to have caused him to suffer "great mental anguish and agony resulting in his attempting to take away his life." The petitioner claimed that on that day, the respondent, contrary to the wishes of the petitioner, sought to accept a second travelling scholarship as a result of which, both the petitioner and the respondent had a heated argument. The parties then went to see one Dr. Storey and later, a Miss Day, both of whom the petitioner claimed did not give him a chance to be heard. This made him so upset that he resorted to taking some sleeping pills.

The co-respondent is also a teacher at the Baharuddin Vocational Institute. The petitioner alleged that on many occasions the respondent and the co-respondent locked themselves together for long periods of time inside the store-room attached to the co-respondent's classroom. From this, the petitioner asked the court to infer that the respondent had committed adultery with the co-respondent. The petitioner